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February 28, 2001

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA COURIER

Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
CY-B402
Washington, D.C. 20554

Re: Application by Verizon New England, Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verzion Enterprise Solutions) and Verizon Global Networks, Inc. for Authorization to Provide In-Region InterLATA Services in Massachusetts, CC Docket No. 01-9

Dear Ms. Salas:

Enclosed for filing in the above-referenced proceeding pursuant to the Commission's January 16, 2001 Public Notice Requesting Comments are an original, one paper copy, and a diskette copy of the Reply Comments of Winstar Communications, Inc.

Please date stamp and return the enclosed extra copy of this filing in the self-addressed, postage prepaid envelope provided. Should you have any questions concerning this filing, please do not hesitate to call us.

Respectfully submitted,

H J Bastiampillai

Harisha J. Bastiampillai

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of	)	
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Application by Verizon New England, Inc.	)	
Bell Atlantic Communications, Inc.	)	
(d/b/a Verizon Long Distance),	)	CC Docket No. 01-9
NYNEX Long Distance Company	)	
(d/b/a Verizon Enterprise Solutions)	)	
and Verizon Global Networks, Inc., for	)	
Authorization to Provide In-Region,	)	
InterLATA Services in Massachusetts	)	

REPLY COMMENTS OF WINSTAR COMMUNICATIONS, INC.

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February 28, 2001

SUMMARY

Winstar urges that the Commission not limit its review of Verizon's section 271 application in Massachusetts to "hot-button" issue(s). The issue of DSL loop provisioning is a very important issue crucial to the development of competitive advanced services, and merits the considered inquiry proposed by the U.S. Department of Justice and other commenters. The Commission must not forget, however, that the foundation of the Telecommunications Act was built on the hope of the advent of facilities-based competition. Winstar is deploying its own facilities-based network throughout the United States. Crucial to this deployment, and crucial to the development of true facilities-based competition, is Winstar's ability to interconnect its network with those of other carriers, particularly the incumbent carrier in the region. It is not a mere coincidence that when the competitive checklist was drafted interconnection was made the first checklist item because interconnection is fundamental to the development of competition.

Winstar had documented both in this proceeding, and in CC Docket 00-176, the pervasive problems it has endured in regard to Verizon's provisioning of interconnection trunking. These problems strike at very heart of Winstar's ability to deploy a competitive network, because inability to interconnect with another carrier, particularly the incumbent carrier, is vital to the operations of one's network. Winstar has noted in this proceeding how its efforts to upgrade its network and migrate traffic are often put on hold, or significantly delayed, by Verizon's failure to provision trunks in a timely manner.

Verizon has argued that the performance measurements show that it is providing interconnection trunking on a nondiscriminatory basis. Careful analysis of those performance measures show numerous exclusions and/or qualifications of data. In some cases, Verizon is not meeting the relevant metric, and in other cases, the sampling size is far too small to reach any

conclusions as to its performance. In many cases, the exclusion of data or the qualifications on the data render the particular metric useless in evaluating Verizon's performance.

The situation is very much akin to the problems highlighted with the DSL loop provisioning metrics. Verizon often uses many of the same excuses, *i.e.*, "customer not ready" or "facilities not available," to exclude data or its failure to meet a particular metric. For the same reasons the Department of Justice found the performance metrics particularly unhelpful in evaluating Verizon's DSL loop provisioning, the metrics do not shed much light on Verizon's interconnection trunking performance.

This Commission has recognized that it must look at the totality of an applicant's performance in evaluating an application, particularly when the performance measures are of limited use. The case presented by Verizon does not define and demonstrate an acceptable level of nondiscriminatory performance in regard to interconnection trunking. Winstar, meanwhile, has produced evidence, both anecdotal and quantitative, that demonstrates Verizon's poor interconnection trunking performance. Consideration of the totality of Verizon's performance in regard to interconnection trunking demonstrates that Verizon has failed to meet its burden in proving compliance with the first item of the checklist, and, thus, supports rejection of Verizon's application.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Application by Verizon New England, Inc. Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) and Verizon Global Networks, Inc., for Authorization to Provide In-Region, InterLATA Services in Massachusetts	))))))))))	CC Docket No. 01-9

REPLY COMMENTS OF
WINSTAR COMMUNICATIONS, INC.

Winstar Communications, Inc. ("Winstar") by undersigned counsel and pursuant to the Public Notice issued January 16, 2000, submits these reply comments concerning the above-captioned application of Verizon New England, Inc, Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), and Verizon Global Networks, Inc. ("*Verizon Application*") filed on January 16, 2001. For the reasons stated below, and those previously raised by Winstar in CC Docket 00-176 and this docket, the Commission should deny Verizon's application to provide interLATA services in the Commonwealth of Massachusetts.

I. THE LIMITATIONS OF PERFORMANCE MEASUREMENTS

The use of performance measurements has become an increasingly important criterion in the evaluation of a regional Bell Operating Company's ("RBOC") compliance with the requirements of the Section 271 competitive checklist. The Commission terms the measurements as "valuable evidence,"[1] and the U.S. Department of Justice notes that achievement of performance benchmarks in a commercial environment may serve as a demonstration that the market has opened.[2]

Satisfaction of benchmarks, however, should not serve as a proxy for checklist compliance. This Commission has noted that "we do not view each particular metric as wholly dispositive of checklist compliance."[3] The Commission has stated that "[u]ltimately the determination of whether a BOC's performance is consistent with the statutory requirements is a contextual decision based on the totality of the circumstances."[4] The Commission went on to add:

> [I]n sum, we do not use performance measurements as a substitute for the 14-point competitive checklist. Rather, we use performance measurements as valuable evidence with which to inform our judgment as to whether a BOC has complied with the checklist requirements. Although performance measurements add necessary objectivity and predictability to our review, they cannot wholly replace our own judgment as to whether a BOC has complied with the competitive checklist.[5]

The Commission has correctly declined to use performance measurements as a surrogate for checklist compliance as performance statistics may not always portray the full picture of a RBOC's performance. This is most clearly evident in this proceeding. While Verizon has based its application on a "substantial number of statistical analyses of its performance," the fact that each performance report is "subject to important

1 *Joint Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, CC Docket No. 00-217, Memorandum Opinion and Order, FCC 01-29, ¶ 31 (Jan. 22, 2001)("*SBC KS/OK Order*").

2 CC Docket 01-9, Evaluation of the U.S. Department of Justice at p. 5 (Feb. 21, 2001)("*DoJ Evaluation*").

3 *SBC KS/OK Order* at ¶ 31.

4 *Id.*

qualifications and/or exclusions of data – in many cases the accuracy or validity of these reports is challenged by commenters" undercut the usefulness of the performance measurements in providing a "clear demonstration of nondiscriminatory performance."[6]

The record of this proceeding has highlighted the inadequacies of performance measurements in demonstrating Verizon's performance in regard to DSL loop provisioning because of Verizon's dilution of these measurements through exclusion of large amounts of data.[7] DSL loop provisioning, however, is not the only area in which Verizon renders performance measurements inadequate through qualifications and/or exclusion of data. The same situation has occurred in regard to interconnection trunking as has been demonstrated in Winstar's filings in both this proceeding and CC Docket 00-176. In the next section, we shall specifically address some of the specific failings of the performance measurements in adequately tracking Verizon's performance.

It is important that this Commission look further into, and beyond, the performance measurements to determine if the statistics accurately reflect Verizon's performance. The Commission must ask if Verizon's limitations and exclusions render these performance measurements useless, and whether examination of the totality of the situation presents a different picture of Verizon's performance. As the Department of Justice astutely urged, the Commission should:

> [p]ay particular attention to the importance of demonstrated achievement of adequate benchmarks of wholesale performance, measured by objective performance data. In particular, participants in the section 271 process (including applicants, state commissions and commenters) should work towards developing a record that will show whether such benchmarks have been achieved. Components of such a showing would include three

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5 *Id.* at ¶ 33.
6 *DoJ Evaluation* at p. 3.
7 *See*, *DoJ Evaluation* at pp. 7-12.

> types of evidence: (1) whether reliable systems for gathering, processing, reporting and ensuring the integrity of performance data have been implemented; (2) whether those systems measure the competitively significant aspects of a BOC's wholesale performance; and (3) whether an "acceptable" level of performance has been defined and can be demonstrated through that performance measurement process.[8]

In regard to interconnection trunking, the performance measurements do not measure the competitively significant aspects of Verizon's wholesale performance and has not defined and demonstrated an "acceptable level" of performance.

II. THE PERFORMANCE MEASUREMENTS DO NOT PROVIDE AN ACCURATE PORTRAYAL OF VERIZON'S INTERCONNECTION TRUNKING PERFORMANCE

Winstar has demonstrated in this proceeding that its problems in regard to interconnection trunking pervade all areas of the provisioning process. Winstar has encountered problems in ordering, delivery of firm order commitments, and actual delivery of the trunks. Winstar will examine each stage of the process and demonstrate how the performance measurements do not adequately reflect Verizon's performance.

A. Ordering

For the clock to start on Verizon's interval completion performance, a valid order needs to be submitted.[9] Verizon argues that a reason there is delay in provisioning trunks within a standard interval is that "CLEC frequently make significant changes to their trunk orders after they are submitted to Verizon-MA."[10] From March 2000 to June 2000,

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[8] *DoJ Evaluation* at pp. 6-7.

[9] *Investigation by the Department of Telecommunications and Energy upon its own motion pursuant to Section 271 of the Telecommunications Act of 1996 into the Compliance Filing of Verizon of New England, Inc. d/b/a Verizon – Massachusetts as part of its application to the Federal Communications Commission for entry into the in-region, InterLATA (long distance) telephone market*, MA D.T.E. Docket No. 99-271, Verizon Massachusetts Measurements Affidavit at ¶ 59 (May 26, 2000)("Measurements Affidavit").

[10] MA D.T.E. Docket No. 99-271, Verizon Massachusetts Supplemental Checklist Affidavit at ¶ 21 (August 4, 2000)("Supplemental Checklist Affidavit").

the average date for a CLEC to submit a complete and final CLEC trunking order ranged from 3.5 days to 58.3 days after it was first submitted."[11] Verizon, of course, blames CLECs for this delay.

The reasons for these changes are rooted in Verizon's ordering systems. Winstar noted how typically, Winstar will submit an order and wait for days or perhaps weeks for a response. Winstar will be forced to escalate its inquiry into the status of its order, only to be informed that the order must be resubmitted again to correct minor flaws in the order. Verizon's system is particularly frustrating because if an order includes five alleged errors, it must be resubmitted five times before each error is captured by Verizon's system. CLEC order changes and cancellations do not currently flow-through.[12] An order that flows through is one that is processed by electronic ordering interfaces completely and does not require manual intervention.[13] Thus, each resubmission required by Verizon's system will incorporate the delays attendant with manual processing of orders.

Winstar has also been experiencing particular problems with Verizon's Open Query List in regard to pending orders. The List will state the order is in query when it is not. Thus, Winstar is unable to track properly many of its pending orders. In addition, when Winstar attempts to escalate its inquiry on a certain order, it finds that the particular individual to contact keeps changing, and the website information as to whom to contact is frequently incorrect.[14] All these factors increase the delay in the provisioning of the

[11] *Id.*

[12] MA D.T.E. 99-271, Verizon Massachusetts Supplemental Measurements Affidavit at ¶ 12 (August 4, 2000)("Supplemental Measurements Affidavit").

[13] Measurements Affidavit at ¶ 45.

[14] Verizon provides a CLEC handbook on its website that is purported to provide up-to-date information that a CLEC needs to interact with Verizon.

trunks, but since they occur before the clock starts to tick, the delays will not be reflected in the average completed interval.

These deficiencies in Verizon's ordering process also will not be captured by the ordering metrics because the metrics Verizon's utilizes to measure its interconnection ordering processes deal with "on time firm order confirmation" (Metric 1-12) and "on time Trunk ASR Reject" (Metric 2-12).[15] The FOC timeliness, however, is measured from the date Verizon deems it has received a valid access service request ("ASR"); which means all order "errors" will need to be rectified.[16] Thus, any delays caused by Verizon's poor ordering process for interconnection trunks would not be captured in this metric. Presumably, the "on time Trunk ASR Reject" should track any delays in Verizon issuing reject notices, but for that metric, Verizon claims a "small sample size exemption".[17]

B. Firm Order Confirmations

A firm order confirmation formally conveys the committed due date of Verizon Massachusetts to deliver the trunk(s).[18] Interconnection trunking orders are divided into six categories based on the size and nature of the order and whether the order was timely forecasted by the CLEC.[19] Category 1 deals with augments of 192 trunks or less to existing trunk groups and Verizon is required to provide a FOC for these types of orders within 10 business days.[20] For all other categories, the FOC delivery is part of a

15 *Supplemental Measurements Affidavit*, Exhibit H, p. 1.

16 Measurements Affidavit, ¶ 35.

17 Supplemental Measurements Affidavit, Exhibit H, p. 1. This metric also only tracks Category 1 orders which as we shall show below exclude most of Winstar's orders.

18 Supplemental Checklist Affidavit, ¶ 19.

19 CC Docket No. 00-176, Joint Declaration of Paul A. Lacouture and Virginia P. Ruesterholz at ¶ 18 (Sept. 16, 2000)("Lacouture/Ruesterholz Declaration"); Measurements Affidavit, ¶ 57.

20 Lacouture/Ruesterholz Declaration at ¶ 18; Supplemental Checklist Affidavit at ¶ 19.

"negotiated process" associated with the overall completion date of the trunk order,[21] but Verizon argues that it "provides FOCs . . . sufficiently in advance of the date due to enable CLECs to complete the trunk provisioning on time."[22] Verizon also states that for these categories, "the necessary provisioning information has already been communicated between the CLECs and Verizon-MA to synchronize broader joint Verizon-MA and CLEC work efforts."[23]

Verizon's latest set of performance statistics for all CLECs, for December 2000, show that it was not meeting the ten day interval for issuing the FOC for Category 1 orders.[24] In fact, Verizon far exceeded the interval by taking on average 23.20 days and making the interval on only 80% of the Category 1 orders.[25] For the other categories, Verizon had an on-time FOC for only 71.88% of the orders.[26] Thus, the most recent performance statistics do not demonstrate that Verizon is meeting the required performance standards for FOC delivery.

This has been an enduring problem for Winstar in particular. During the period January 2000 to June 2000, out of a total of 89 trunks ordered by Winstar, Verizon only returned 5 firm order commitments ("FOCs") on time.[27] In Massachusetts, out of 10

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21 Supplemental Checklist Affidavit, ¶ 34.

22 Supplemental Checklist Affidavit, ¶ 19.

23 *Id.*

24 CC Docket 01-9, January 30, 2001 *Ex Parte* Filing, December 2000 Carrier-to-Carrier Statistics, CLEC Aggregate Peformance, Trunks, p. 18, Metrics OR 1–11 and OR 1-12 (Jan. 30, 2001)("December 2000 C2C Statistics").

25 *Id.*

26 *Id.*, Metric OR 1-12.

27 CC Docket 00-176, Comments of Winstar Communications, Inc. at p. 5 (Oct. 2000)("*Winstar Comments*"). Winstar is being generous on these figures as it counts as an "on-time" order those for which the FOC is late, but Verizon calls in advance to report its late status.

trunk orders, Verizon was late in returning the FOC on four of the orders.[28] Verizon attempts to excuse this by first arguing that it does not issue FOCs for individual trunks but for individual ASRs, *i.e.*, orders.[29] Thus, for this period, Verizon argues that there were five Winstar orders for a total of 110 trunks.[30] Verizon does admit that for the one Category 1 order of the five, it was late in providing the FOC.[31] The other four orders were Category 3 "project orders." For these orders, Verizon notes there is no particular mandated interval, but that it "delivered the FOC sufficiently in advance of the due date to enable Winstar to complete the trunk provisioning on time."[32]

Thus, for non-Category 1 orders, it appears the standard is what Verizon feels is "sufficiently in advance of the due date." Winstar has noted in this proceeding, however, that Verizon is not providing FOCs sufficiently in advance of the due date for CLECs. Winstar noted, however, that when Verizon finally does issue a FOC accepting the order and promising to fulfill the order, the FOC often provides very little, or no, notice of when Verizon actually will provision the ordered item. As a result, Winstar frequently is unable to prepare for the "now or never" appointment with Verizon technician. Accordingly, Verizon will characterize these orders as situations of "customer not ready," and exclude the orders from the relevant performance metrics.[33]

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28 MA D.T.E. Docket No. 99-271, Winstar Communications, Inc. Responses to Questions of the Massachusetts Department of Telecommunications and Energy, Response to Request No. 1 (August 7, 2000).

29 Supplemental Checklist Affidavit, ¶ 35.

30 *Id.*

31 *Id.*

32 *Id.*

33 Verizon utilizes the "customer not ready" designation on nearly 60% of all interconnection trunking orders from March 2000 to July 2000. MA D.T.E. Docket No. 99-271, Verizon Massachusetts Supplemental Checklist Affidavit (August, 2000)("*Verizon Supplemental Checklist Affidavit*"). *See* Attachment to Volume 42, Tab 494 of Appendix B to Verizon's Application.

In addition, Verizon attempts to mask its poor provisioning by arbitrarily aggregating a number of orders into a "project."[34] This lets it reduce the number of orders for which it misses due dates. The situation is exacerbated by the fact that Verizon will often not provide the full delivery of trunks for a particular order, but only deliver part of the order. Yet, Verizon will count this as an order made, and presumably since this order is part of a "project" will deem that the "project" was timely provisioned.

It is ludicrous for Verizon to argue that it is timely delivering FOCs for interconnection trunking, when only a small subset of CLEC orders, *i.e.*, Category 1 orders are being tracked. For the remaining orders, the standard is an arbitrary "sufficiently in advance of due date" time frame which is unilaterally determined by Verizon, and as Winstar has noted, is very often not in advance of the due date. In addition, even for the Category 1 orders, the amount of orders is too small to make any objective determinations that Verizon is providing FOCs in a timely manner. Verizon admits this by noting a "small sample size exemption" for the months of March – June 2000 for the "on time Firm Order Confirmation" metric.[35] In the December 2000 statistics, there were only 10 observations for Category 1, as opposed to 106 observations for the other categories.[36] Thus, the statistics provide far too small a subset of orders to demonstrate that Verizon is providing FOCs on time. Verizon bears the burden of proof that it meets all the requirements of the checklist,[37] and Verizon should be required to demonstrate that it is providing FOCs in a timely manner particularly given its failure to

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[34] *Id.* at p. 43
[35] Supplemental Measurements Affidavit, Exhibit H, page 1.
[36] December 2000 C2C Statistics, p. 18.
[37] *Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to*

meet the metrics in December 2000, and the evidence that Winstar has provided that shows that Verizon is not providing FOCs in a timely manner.

C. Delivery

As proof of its timely delivery of trunks, Verizon claims that it meets over 99% of the due dates for CLEC interconnection trunks.[38] It adds, however, that it "cannot complete the installation of interconnection trunks within a standard interval, or by a requested due date, if the CLEC is not ready to accept the trunks."[39] It claims from March 2000 to June 2000, CLECs were not ready to accept the trunks on nearly 60% of the orders.[40] Thus, Verizon is either counting these purported "customer not ready" situations as due dates that are met, or are excluding these orders from the metric.[41] Winstar demonstrated above how these "customer not ready" situations are caused by Verizon's failures to provide FOCs sufficiently ahead of the due date for Winstar to make the appointment.

The Department of Justice has noted that in interpreting on-time metrics such as percentage of orders completed on time, "it is important to recognize that, because they are calculated based on *completed* orders rather than all *submitted* orders, they will overstate the quality of the BOC's performance if orders are canceled because the BOC takes too long provision them."[42] Winstar noted how it is often forced to cancel orders that Verizon cannot provision, or is taking too long to provision. For instance, after 30

Section 271 of the Telecommunications Act of 1996 to provide In-Region, InterLATA Services in Texas, CC Docket No. 00-65, FCC 00-238 at ¶ 47 (June 30, 2000) ("*SBCTX Order*")

38 Supplemental Checklist Affidavit, ¶ 21.

39 *Id.*

40 *Id.*

41 This situation is akin to the one where Verizon's exclusion of data collectively removed from the peformance report for one DSL loop metric 83% of CLEC orders. *DoJ Evaluation* at p. 9.

42 *DoJ Evaluation*, p. 9, n. 29 (emphasis in original).

days, Verizon's systems automatically cancels provisioning orders that Verizon cannot provision. Thus, Winstar had no alternative to canceling these orders, as it had to turn its attention and resources to identifying other alternatives for handling the traffic. The order nevertheless is unfulfilled. Winstar also noted that if it did not cancel the order, Verizon would also treat those orders as "customer not ready."[43] These orders would not be captured in the relevant performance metric, thus overstating the quality of Verizon's performance.

Even when Verizon provides the FOC with sufficient notice such that Winstar is able to make the appointment, the Verizon technician will meet them and either tell them that the facilities are not available, or only deliver part of the order. Verizon will count this as a FOC that was met, despite its failure to provide the full order. For the remaining part of the order, Verizon will not issue a new FOC, but will instead place the order on "backorder," thus excluding the order from the relevant FOC metric. Meanwhile, the CLEC is unable to bill its customer until the full order is completed.[44] Verizon also will require a CLEC to accede to a changed due date on orders where it has already missed the due date or is about to miss the due date. If the CLEC does not accede, the order is also "backlogged" leading to further delays in provisioning. In most of these cases, Verizon lacks the facilities to complete the order, so it holds the order. These situations exemplify the manner in which Verizon's performance statistics are skewed or gamed.

As with the FOC timeliness statistics, whatever data Verizon does report is woefully inadequate. Verizon only reports the average interval completed for Category 1

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[43] CC Docket No. 00-176, Winstar Letter to Magalie Roman Salas re Notice of *Ex Parte* Meeting at p. 3 (November 8, 2000)("*Winstar Ex Parte Letter*").

[44] Winstar can only begin billing on the order when the order is designated "ready for business."

orders, and even for those orders, only five observations are reported.[45] It is impossible based on the sparse amount of data to make any determination that Verizon is meeting its obligations. In fact, the data that Winstar has adduced demonstrates that Verizon's performance in regard to delivery of trunks is seriously deficient. Winstar computed the average amount of days it took for Verizon to provision trunks from the date of the submission of the access service request ("ASR") to the date the order was "ready for service" ("RFS'). In Massachusetts, the average period was 97.2 days with some orders taking 510 days.[46] Winstar did a comparative analysis of the intervals for other ILECs in regard to provisioning trunks to Winstar and Verizon's performance in Massachusetts was by far the worst.[47]

III. VERIZON'S OBJECTIVE CASE IS LACKING

While much attention has been paid to the lack of adequate performance measures and data to support Verizon's claim that it is providing nondiscriminatory provisioning of DSL loops, the same situation exists in regard to interconnection trunking. As with its DSL loop provisioning data, Verizon's performance reports in regard to interconnection trunking are subject to important qualifications and exclusion of data which undercuts the accuracy and validity of the data. Winstar has demonstrated that Verizon's performance data in regard to interconnection trunking is actually a slender reed which does not support Verizon's claims of checklist compliance. Winstar has shown that the performance metrics do not measure competitively significant aspects of Verizon's

[45] December 2001 C2C Performance Statistics, page 18, Metric 2-09.

[46] CC Docket 01-9, Comments of Winstar Communications, Inc., Exhibit A Trunk Provisioning Data (February 6, 2001).

[47] *Id.*, Exhibit B, Average Number of Days from ASR to RFS for RBOCs.

performance and that they do not demonstrate the achievement of an acceptable level of performance by Verizon in regard to interconnection trunking.

Verizon may attempt to argue that if Winstar was dissatisfied with the performance measurements it should have challenged the measurements at the state level. First, Winstar was an active participant in the Massachusetts D.T.E. proceeding, and did demonstrate many of the flaws in Verizon's data. The MA D.T.E., however, was willing to accept at face value Verizon's characterizations and mischaracterizations of the data. Second, Winstar does not have as much a problem with the definitions of the metrics,[48] as with Verizon's manipulation of the metrics through its exclusions and limitations which the MA DTE did not address. Finally, Verizon bears the ultimate burden of proof in Section 271 proceedings, and, thus, it must ensure that adequate metrics are implemented to track its performance and support its case. The failure of the metrics to measure competitively significant aspects of Verizon's performance and demonstrate the achievement of an acceptable level of performance by Verizon in regard to interconnection trunking is a failure that Verizon must bear.

The performance data in regard to interconnection trunking does not provide "valuable evidence" of checklist compliance on the part of Verizon; in fact, in some cases it provides evidence of checklist noncompliance. The Commission needs to look beyond and underneath the data, and Verizon's characterization of the data. Such a look at the "totality of the circumstances" will clearly demonstrate that Verizon is not complying with Checklist Item 1.

48 Although it does not agree with the exclusion of non-category 1 orders from the relevant metrics.

IV. CONCLUSION

For the foregoing reasons, the Commission should deny Verizon's application for Section 271 authority in Massachusetts.

Respectfully submitted,

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